IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.853 OF 2005

Ambar Food Private Limited & Anr. ...Petitioners.
Vs.
The Greater Bombay Co-operative Bank Ltd.&Anr. ... Respondents.

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Mr. Sanjay K. Jain for the Petitioner.
Mr. Praveen Shetty i/b. Shaunak Satpute for Respondent No.1.

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CORAM : DR.D.Y.CHANDRACHUD, J.

May 3, 2005.

P.C.:

This petition calls into question, an order passed by the Co-operative Appellate Court by which an appeal filed by the Petitioner challenging the refusal of an interim injunction by the Co-operative Court to restrain the First Respondent from taking further action upon a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("Securitisation Act"), has been rejected. The First Respondent issued a notice under Section 13(2) on 30th November 2004 to which the Petitioner

submitted a reply on 29th January 2005. In accordance with the law laid down by the Supreme Court, the Bank has dealt with the defence of the Petitioner and has rejected it on 5th February 2005.

The First Respondent had initially sanctioned a Cash Credit Facility in the amount of Rs.300 lakhs to the Petitioner on 25th February 2002. The collateral security included an English mortgage of an Office Block at 101, Raheja Centre, Free Press Journal Marg, Mumbai-400 021, admeasuring 811 sq.ft. and residential premises at Flat No.12, Churchgate Mansion, A Road, Churchgate, Mumbai-400 020, admeasuring 1463 sq.ft. Personal guarantees were also executed. On 27th February 2004, a revised sanction was communicated by the First Respondent in response to a request of the Petitioner, of a Cash Credit Facility in the amount of Rs.50 lakhs and a Working Capital Term Loan of Rs.180 lakhs. The Bank required the creation of an English Mortgage in respect of the residential flat at Churchgate and of certain commercial premises comprised of a Garage, G-6, at Panchsheel Building, Churchgate. The letter of sanction provided that the

office premises at Nariman Point valued at Rs. 81.10 lakhs and which were lodged with the Bank as collateral security would be released when the outstanding in the Working Capital Term Loan Account was reduced to Rs.150 lakhs and upon a mortgage being created in respect of the Garage at Panchsheel Building.

An inspection was carried out by the Reserve Bank of India on 30th June 2004 of the First Respondent under Section 35 of the Banking Regulation Act, 1949. The inspection report inter alia dealt with the loan account of the Petitioner and while noting certain irregularities in connection therewith, the report recorded that the account had been treated as a non-performing asset as on 30th June 2004 since it had been continuously overdrawn vis-a-vis the drawing power for more than six months. The inspection report of the Reserve Bank of India was as follows :

> "(b) Amber Foods (P) Ltd.
>
> The company engaged in the wholesale distribution of food products and also running a departmental store was sanctioned a CC limit of Rs.300.00 lakh on February 22, 2002. As the company could not run the wholesale business profitably, it sold off its wholesale business and limit was reduced to Rs.230.00 lakh based on unrealistic

projections of stock and sundry debtors. The sales of the company declined from Rs. 217.14 lakh in 2001-02 to Rs. 1405.38 lakhs in 2002-03 and the borrower had projected the sales of Rs. 927.00 lakh for the year 2003-04. The turnover in the account was only Rs. 639.00 lakh and the borrower had indicated in the projections that he would avail a CC limit of Rs. 40.00 lakh from Citibank. The company started diverting its credit card receivables to Citibank. The bank carved out a huge portion of Rs. 180.00 lakh from the cash credit limit of Rs. 230.00 lakh as WCTL on February 27, 2004, repayable in 60 monthly installments. The stock statement as on June 30, 2004 revealed that the total stock in the firm was around Rs. 80.00 lakh and the statement of sundry debtors included huge dues aggregating Rs. 308.14 lakhs from 3 companies/firms (Adeshwar Agro – Rs. 42.96 lakhs, Santosh Trading Co. - Rs. 205.29 lakhs and Mahavir Agro – Rs. 59.89 lakh) which were more than six months old. After excluding the above, the sundry debtors worked out to Rs. 5.24 lakh which in all probability were credit card dues against which the borrower has a CC limit with Citibank. The bank was not adding the balance in the WCTL account to the outstanding in the cash credit account to verify whether the withdrawals were within the drawing power. The account was continuously overdrawn vis-a-vis drawing power for more than 6 months and hence, it has been treated as NPA as on June 30, 2004 by the Inspecting Officer."

The report noted that the Petitioner had closed its wholesale distribution business and was running a departmental store. The credit limit was reduced from Rs.300 lakhs to Rs.230

lakhs. However, the reduction was not commensurate with the reduction of sales and inventory. Sundry debtors included huge dues from three wholesale buyers aggregating to Rs. 308.14 lakhs which debts were more than six months old. The Petitioner was found to be drawing more than its drawing power continuously.

On 30th September 2004, the Petitioner addressed a letter to the First Respondent assuring the First Respondent that it would stop conducting the business of a Super Market with effect from 1st November 2004 and that the business would be handed over for conducting and operation to a third party. The Petitioner informed the First Respondent that the entire liability of the Petitioner to the First Respondent would be paid off by the third party by 12th October 2004. The letter has not been annexed to the Petition. Since the letter has been adverted to in the notice of the Bank under Section 13(2), of the Securitisation Act the Court had called upon the Petitioner to produce the letter. The material part thereof reads as follows :

> "This is to inform you that we will stop conducting of "Suryodaya Super Market" with effect from 01/11/2004.

> The business will be taken over by M/s.Suryodaya Stores Pvt. Ltd. for conducting & operation of the said Super Market with effect from 01/11/2004. The entire liability towards yourselves will be paid off by M/s.Suryodaya Stores Pvt.Ltd. by 12/12/2004, approximately.
>
> M/s.Avenue Corporation will be financing M/s.Suryodaya Stores Pvt. Ltd. who will in turn pay off our entire liability. Kindly release the properties as soon as the payment is made by M/s.Suryodaya Stores Pvt. Ltd. to yourselves." (emphasis supplied).

The time schedule which was indicated by the Petitioner for the payment of its dues in the aforesaid letter was not observed. The Bank thereupon issued a notice under Section 13(2) of the Securitisation Act recording that (i) despite the assurance of the Petitioner in its letter dated 30th September 2004, the entire liability had not been paid off by 12th October 2004; (ii) The account had been classified by the Bank as a Non-performing asset on 30th June 2004 in accordance with the directions issued by the Reserve Bank of India; and (iii) The outstanding liabilities under the Cash

Credit Facility were Rs.2,26,92,910/-. The Petitioner, as noted earlier, submitted its reply on 29th January 2005 which was dealt with by the First Respondent on 5th February 2005 in a letter addressed to the Petitioner.

The interim relief that was sought before the Co-operative Court included (a) a direction to the First Respondent to release the office premises at Raheja Centre and permit the completion of the sale in respect thereof; (b) A mandatory direction to the First Respondent to allow the Petitioner to repay the outstanding dues in accordance with the sanction dated 27th February 2004; (c) An injunction restraining the First Respondent from exercising its power under the Securitisation Act; (d) An injunction from implementing the notice dated 30th November 2004 under Section 13(2); and (e) An injunction restraining the First Respondent from interfering with the possession of the Petitioner of the office premises at Raheja Centre, the residential premises at Churchgate Mansion and the premises in Panchsheel building.

Both the Co-operative Court and Co-operative Appellate Court had declined to grant an ad-interim injunction (save for the Panchsheel premises). At this stage, the Bank has issued a notice under Section 13(2). Upon the taking of measures under Section 13(4), the Petitioner would have the remedy of an appeal before the Debt Recovery Tribunal under Section 17(1) of the Securitisation Act. Counsel appearing on behalf of the Petitioner, however, submitted that the action of the Bank was fraudulent and, therefore, the Petitioner is entitled to an injunction at this stage. There is no merit in the submission. No case of fraud has been established. Both the Courts have upon considering the case of the Petitioner, declined to grant an interim injunction. The exercise of the supervisory jurisdiction under Article 227 of the Constitution, is not warranted when there is nothing perverse or arbitrary in the decision of the Courts below. The Petitioner furnished an assurance to the First Respondent on 30th September 2004 agreeing to pay off its entire liability by 12th October 2004, an assurance which the Petitioner has not fulfilled. The Court exercising writ jurisdiction would not, particularly in the facts and

circumstances of this case, restrain the First Respondent from taking recourse to its statutory powers under the Securitisation Act. The exercise of those powers is subject to an appeal before the Debts Recovery Tribunal once a measure is taken under Section 13(4).

One of the reliefs that was sought before the Co-operative Court, as noted above, was a direction to the First Respondent to release the office premises at Raheja Centre and to permit the Petitioner to complete the sale transaction in respect thereof. During the pendency of this petition, the First Respondent agreed to issue a No Objection Certificate to the Petitioner for completing the sale transaction of the office premises and it is common ground that a No Objection Certificate has been issued. On 4th April 2005, a statement was made that the balance of the consideration of Rs.30 lakhs would be directly paid to the First Respondent by the purchaser within a period of two weeks. An adjournment has thereafter been granted on 25th April 2005. Today Counsel appearing on behalf of the Petitioner has assured

the Court that the balance of the consideration will be paid to the First Respondent on 5th May 2005 and, in any event, within a period of one week from today. The First Respondent has no objection thereto. In the event that the balance of the sale consideration is paid, the first prayer in the application for interim relief before the Co-operative Court would stand worked out. However, it is clarified that the First Respondent will be at liberty to take action in accordance with law if the payment is not forthcoming in terms of the assurance recorded hereinabove.

For all the aforesaid reasons, I do not find any merit in the petition. The Petition shall accordingly stand dismissed.

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